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Review Paper

PRINCIPLES, IMPORTANCE AND ISSUES IN THE IMPLEMENTATION OF COLLECTIVE WORKERS' RIGHTS

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Abstract. *Collective rights and obligations arising from labour relations are an expression of collective interests of the parties involved in the labour relationship. The basic collective workers' rights include the right to union organization, the right to participate in decision-making, the right to collective bargaining, and rights related to resolving collective labor disputes. The exercise of collective workers' rights is interrelated and interdependent. Frequently, one collective right cannot be exercised without another. This paper analyzes the principles and significance of enacting collective labor rights, with emphasis on the challenges in their implementation. The author offers recommendations on how to improve the application of regulations related to collective employee rights.*

Key words: *collective labor rights, labor legislation, employees, protection*.

1. INTRODUCTION

The employment relationship, as the central issue of labor law, constitutes a set of rights, obligations, and responsibilities held by the subjects of the social labor relationship. It is a social labor relationship regulated by law (Ilić Petković, 2020: 55). It implies a range of rights, obligations, and responsibilities of all participants in the social labor relationship (Ilić Petković, 2022: 76). A social labor relationship can be defined as the relationship that arises between an individual and other participants in the labour process. It has two aspects: individual and collective (Šunderić, Kovačević, 2017: 27). Thus, an employment relationship can be either individual or collective. An individual employment relationship is voluntary; it is legally regulated by an employment contract that establishes the relationship between the employer and the employee, where both parties assume rights, obligations, and responsibilities based on the specific employment relationship. The employee assumes

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the obligation to perform the job in an organized and responsible manner, while the employer assumes the obligation to pay the employee the corresponding salary (Kulić, Perić, 2016: 83). Collective labor relations arise between the employee group or their labour union organizations and the employer or the employers' organizations. An individual employee cannot exercise collective rights. Collective rights and obligations arising from the employment relationship reflect the collective interests of employees and employers. These rights and obligations are characterized by professional (occupational) connection, as they are based on the unity of professional interests (Kulić, Škorić, 2020: 336).

In the contemporary circumstances characterized by economic, social and political globalization, there are growing expectations in terms of ensuring respect for the rights of employees (Blanton, Blanton, 2016: 2), which refers to collective rights as well. The basic collective workers' rights are: the right to union organization, the right to participate in decision-making, the right to collective bargaining, and rights related to resolving collective labor disputes. The holder of collective rights is an individual but these rights are exercised in a specific way, exclusively through collective action. Thus, every worker enjoys the right to association, strike and collective bargaining; however, the worker cannot exercise any of them as an individual but only as part of a wider group, in accordance with the law. In addition, collective rights certainly do defend collective interests but, by looking after the collective interests, they also satisfy the workers' individual interests. These rights are regulated collectively, apply to all, and are closely interconnected and interdependent.

The paper explores the principles and significance of implementing collective workers' rights in contemporary social conditions through the analysis of relevant scientific literature and positive labor law. In particular, the author examines the challenges in the application of these rights. Based on the research results, the author will propose some solutions for improving the efficiency and effectiveness of their implementation.

2. PRINCIPLES ON THE PROTECTION OF COLLECTIVE WORKERS' RIGHTS

The basic principles governing the protection of the collective workers' rights have been proclaimed by the International Labour Organization (ILO). They primarily refer to the right to organization into labour unions, the right to participate in decision-making, the right to collective bargaining, and rights related to the resolution of collective labor disputes (ILO, 2020: 3).[1]

2.1. Right to Union Organization

Union freedoms and rights represent one of the most significant achievements in the working class struggle to improve its position. They signify the workers' freedom and right (not an obligation) to establish unions, the freedom for employees to join or leave a union at their discretion, the freedom to choose which union to join in conditions of union pluralism, as well as the freedom not to join a union at all (Jovanović, 2018: 377). Union freedoms and rights also involve appropriate protective mechanisms, which can be

[1] ILO (2020). Fundamental Principles and Rights at Work Fact Sheet, International Labour Organization, Geneva, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms_741333.pdf (accessed 24 April 2025).

classified into two groups: non-violent methods (social dialogue, reconciliation, mediation, arbitration) and high-pressure methods (strike).

Union activities are regulated by a large number of international documents, the most prominent of which are two International Labour Organization (ILO) conventions: CO87 Freedom of Association and Protection of the Right to Organize Convention (1948), and CO98 the Right to Organize and Collective Bargaining Convention (1949) (Petrović, 2009: 96). Most ILO member states have ratified these conventions: CO 87/1948 has been ratified by 158 states and CO 98/1949 has been ratified by 168 states (ILO, 2025).[2] At the European level, the most prominent regional sources are the European Convention on Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961), and the Charter of Fundamental Rights of the European Union (2000) (Obradović, 2003: 292-293).

In the Republic of Serbia, the Constitution (2006)[3] guarantees the freedom of association, including the freedom to join unions and the right to abstain from joining any union. Unions are established without obtaining prior (employer's) approval, simply by registering the labour union in the register of associations kept by a state authority, in compliance with the law (Art. 55 of the Constitution). In addition, the Serbian Labor Act (2005)[4] guarantees the freedom of association in labour unions, the right to establish a union without prior approval and engage in union activities, subject to registration in the register kept by the competent state authority (Art. 206 of the Labour Act).

According to the Labor Act (2005), a union is an autonomous, independent and democratic organization of employees, which they join voluntarily in order to ensure collective representation, advocacy, advancement and protection of their professional, labor, economic, social, cultural, and other individual and collective interests. (Art. 6 of the LA). The obligations of labour unions towards the employer are outlined in the Labor Act. For instance, the union is required to provide the employer with a document confirming the registration of the union in the registry within 8 days of the union's registration. In addition, the union must inform the employer about the election of the union's president and members of its governing bodies within 8 days from the election date (Art. 208 of the LA). Unions operating at an employer's premises advocate for the highest level of cooperation with the employer, as well as respect, democratic dialogue, and understanding. Conversely, the employer's obligations towards the union are also stipulated in the Labor Act. The employer is obligated to inform the union about economic and work-related matters of significance for the employees, i.e. union members (Art. 209 of the LA). The employer must ensure relevant technical and spatial facilities, and provide access to necessary data and information for performing the union activities (Art. 210 of the LA). The employer is also required to grant paid leave to union representatives in the circumstances related to performing union duties. in compliance with the law and collective agreements (Art. 211 of the LA). The employer cannot terminate an employment contract, nor otherwise disadvantage a union representative

[2] ILO (2025). Ratifications of Fundamental Instruments by Country, International Labour Organization, Geneva, Switzerland, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB%3A10011%3A0%3A%3ANO%3A%3AP10011_DISPLAY_BY%2CP10011_CONVENTION_TYPE_CODE%3A1%2CF (accessed 10 February 2025).

[3] Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia/RS,* No. 98/2006, 115/2021, https://www.paragraf.rs/propisi/constitution-of-the-republic-of-serbia.html

[4] Zakon o radu (Labour Act), *Službeni glasnik RS*, br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017, 95/2018, https://www.paragraf.rs/propisi/employment-act-republic-serbiahtml

(e.g. by re-assigning them to lower-paid tasks, transferring them to a different workplace, declaring them redundant) during their term in office (Art. 188 of the LA) and for two years after the termination of their function, provided that they act in accordance with the law, collective agreements, and employment contracts.

2.2. Right to Participate in Decision-Making

Employees' participation in decision-making can be perceived both in a broad and a narrow sense. In a broad sense, it entails various forms of involvement of employees or their representatives in the activities that directly or indirectly affect the employer's management (Ugarković, 2020: 271). Participation encompasses any form of employees' involvement in the employer's decision-making process, regardless of whether it occurs at a higher or lower level, and regardless of whether this participation implies information sharing, consultation, or direct participation in decision-making (Jovanović, 2018: 390). It can serve as an enhancement of collective bargaining if the conditions for collective bargaining have been met: the labour union is registered and organized; the union is representative; there is good will of the employer and employees to negotiate; etc.). However, if these conditions are not met by the employer or the union, participation is an "alternative" to collective bargaining, meaning that some decisions at the employer's level are the result of negotiations.

Considering the above, it can be said that participation consists of three segments: a) participation in the form of informing and consulting employees; b) participation through negotiation; and c) participation through appropriate institutional forms (such as employee councils or other bodies, or through employee representatives in the employer's governing bodies) (Jovanović, 2021: 119). In Serbian labor legislation, employees' participation involves informing and consulting employees, electing employee councils and representatives, and the occupational safety and health committee (Ilić Petković, 2020: 71).

The Labor Act stipulates the right of employees to be informed and consulted directly or through their representatives, and to express their views on important work-related issues (Article 13 of the LA). The employer is required to seek the opinion of the union when making certain decisions; in case there is no established labour union, the employer must seek the opinion of the designated employee representatives (Article 16 § 5 of the LA). For example, the employer is required to consult the union when making decisions about introducing night work, implementing programs and measures for resolving employee redundancies, etc. (Articles 62 and 154 of the LA).

Employee information and consultation are also envisaged in the field of occupational safety and health at work. The Occupational Safety and Health Act (2023)[5] outlines both general and specific employer obligations on the implementation of measures regarding occupational safety and health. A general obligation of the employer is to inform employees and their representatives about the introduction of new technologies and work equipment, as well as the risks of injuries and health damage associated with their introduction (Art. 10 of the OSH Act). For example, when two or more employers share a work space, they are obligated to cooperate in implementing measures to eliminate risks of injury or health damage to employees and exchange information on this matter, as well as inform their employees or employee representatives.

[5] Zakon o bezbednosti i zdravlju na radu (Occupational Safety and Health Act), *Službeni glasnik RS*, br. 35/2023, https://www.paragraf.rs/propisi/zakon_o_bezbednosti_i_zdravlju_na_radu.html

The Employee Council is an institutionalized form of employee participation in decision-making. In the Labor Act, the Employees' Council is addressed in only one article; thus, the legislator has provided sufficient latitude for more precise regulation of this issue in the process of collective bargaining, given that provisions on this council are rarely found in collective agreements. Thus, employees can establish the employees' council with an employer who has more than 50 employees. The council provides opinions and participates in decision-making on employees' economic and social rights (Art. 205 of the LA). There is potential for the activities of the council to be regulated by the employer's general acts, such as the rules of procedure or collective agreement.

Another institutional form of employees' participation in decision-making in the field of occupational safety and health is the Employees' Representative and the Occupational Safety and Health Committee, envisaged in the Occupational Safety and Health Act (2023). Employees have the right to elect one or more employee representatives for safety and health matters. The Committee shall be composed of at least three representatives. The employer is obliged to appoint at least one representative to the Committee, ensuring that the number of employee representatives overweighs the number of employer representatives at least by one. The procedure for the election and activities of employees' representatives and the Committee, the number of employee representatives, and their relationship with the union are regulated by the collective agreement, or an agreement between the employer and the employee representatives (in case there is no labour union). The employer must also ensure that at least one employee representative is granted leave from daily duties for at least five hours per month, including the right to salary compensation calculated and paid in the same amount as if they had worked at their usual position. The employer also has to provide the necessary technical and spatial conditions, in accordance with available space and financial resources, which would enable the employee representatives to perform their delegated activities (Art. 57 of the OSH Act).

2.3. Right to Collective Bargaining and Rights Related to the Resolution of Collective Labor Disputes

Collective bargaining is a process in which a representative union and a representative employers' association, acting on behalf of their members, attempt to reach a consensus in good faith and conclude a collective agreement (Jovanović, 2018: 380). The right to engage in collective bargaining and enter into collective agreements is a collective right aimed at protecting the collective interests of employees and employers (Misaliović, 2019: 115). Labour unions and employers' associations most frequently resort to bipartite collective bargaining in the areas of wages, working hours and other working conditions. The desired but not mandatory outcome of collective bargaining is collective agreements at the company, industry or national level. Collective agreements may be concluded in several ways: a) as a result of autonomous agreement of the parties involved, without the involvement of state institutions; b) as a result of support and intervention of the state; or c) in the form of support for the implementation of a specific law or sector policy (Protić, 2021: 133).

Pursuant to the Act on Peaceful Resolution of Labor Disputes (2004),[6] a collective labor dispute is a dispute related to the conclusion, amendments or supplements to a collective agreement; the application of a collective agreement; the application of a general act regulating the rights, obligations, and responsibilities of employees, employers, and unions; the exercise of the right to unionize and act; the exercise of the right to determine the representativeness of a union with the employer; strikes; the exercise of the right to information, consultation, and employee participation in management; and the determination of minimum work processes (Art. 2 of the PRLD Act).

The resolution of disputed issues during collective bargaining is regulated by several legislative acts: the Labor Act (2005), the Civil Procedure Act (2011), and the Act on Peaceful Resolution of Labor Disputes (2004) (Ivošević, Ivošević, 2007: 65). Under the Labor Act (2005), if an agreement on the conclusion of a collective agreement is not reached within 45 days from the commencement of negotiations, the participants may establish an arbitration panel to resolve the dispute (Art. 254 of the LA). Furthermore, there is the possibility for the participants in the collective agreement to seek judicial protection of the rights established by the collective agreement before the competent court. (Art.265 § 4 of the LA). However, resolving collective labor disputes in court is rare. In civil proceedings, the applicable law are civil procedure rules related to collective agreements.

Under the Civil Procedure Act (2011),[7] participants in the concluded collective agreement may seek protection of rights established by the collective agreement when a dispute arises during the process of concluding, amending, or supplementing the collective agreement, provided that the dispute has not been resolved by means of peaceful dispute resolution or arbitration instituted by the participants of the collective agreement in accordance with the provisions of a subject-specific law (Art. 443 of the CP Act).

The Act on Peaceful Resolution of Labor Disputes (2004) provides two methods for the peaceful resolution of collective labor disputes. The first method is the participation of a mediator in collective bargaining for the purpose of providing assistance and preventing the occurrence of a dispute (Art. 16 of the PRLD Act). The second method of peaceful dispute resolution of collective labour disputes is resolution before the Mediation Board (Art. 20 of the PRLD Act). Each participant in the concluded collective agreement may submit a proposal to the National Agency for Peaceful Resolution of Labor Disputes for the participation of a mediator in collective bargaining, with the aim of providing assistance and preventing the emergence of a dispute (Art. 16 of the PRLD Act).

In addition to the peaceful resolution of labor disputes concerning employees' collective rights, there is a legal possibility to resolve disputes through various high-pressure methods. One of them is a strike, defined as a collective cessation of work by employees aimed at compelling the employer to accept their demands regarding disputed issues (Novaković, 2013: 47). Yet, it should be the last resort for employees in protecting their interests. Under the Serbian Constitution, employees have the right to strike in compliance with the law and collective agreement, but this guaranteed right may be limited by he law, depending on the nature or type of activity (Art. 61 of the Constitution). This matter is more specifically

[6] Zakon o mirnom rešavanju radnih sporova (Act on Peaceful Resolution of Labor Disputes), *Službeni glasnik RS*, br.125/2004, 104/2009, 50/2018, https://www.paragraf.rs/propisi/zakon_o_mirnom_resavanju_radnih_sporova.html

[7] Zakon o parničnom postupku (Civil Procedure Act), *Službeni glasnik RS*, br. 72/2011, 49/2013, 74/2013, 55/2014, 87/2018, 18/2020, https://www.paragraf.rs/propisi/zakon_o_parnicnom_postupku.html

regulated in the Strike Act (1996).[8] Apart from strikes, the Serbian labor legislation does not stipulate other methods of employees' pressure in resolving collective labor disputes. However, the comparative law literature provides various other models of pressure, such as picketing outside the employer's premises, boycotting, employer labeling, etc. (Hamark, 2022; Delpha, Chapron, Kenné, 2024).

3. CHALLENGES IN EXERCISING EMPLOYEES' COLLECTIVE RIGHTS

In terms of exercising collective labour rights, the key questions are whether collective labor rights are theoretically well-founded and legally regulated, and why employees worldwide are dissatisfied with their position and their labour rights. The answer is not simple, and there are multiple reasons.

Considering the former socialist countries that have undergone the transition to a capitalist social system, the neoliberal theory is quite simple: those who have capital, have the power. It is evident that employers are economically dominant compared to employees (Hafiz, 2021: 654). During the transition process, labor legislation slowly changed in favor of employers. This trend was followed by privatization, which resulted in increased unemployment and further strengthening of the employers' position. Then, in the processes of attracting foreign investments, investors are often offered various benefits (subsidies, tax breaks, etc.), which again puts employers in a privileged position. In these circumstances, employers frequently hire workers for simple manual jobs, which benefits the employers as they invest nothing in employee training and can offer the lowest legally prescribed working conditions due to the high competition in the labor market (Reljanović, 2019: 209).

Another challenge is the development of new technologies and the automation of work processes, which have led to a decreased need for human labor. Moreover, many jobs are designed to be performed by individual employees, which implies that they do not require cooperation or teamwork (Reljanović, 2019: 211). This results in a decline in labour union membership and weakens the bargaining position of unions in relation to employers. A further issue is the lack of a strategy for defending workers' rights, considering that union actions are often improvised.

Another current issue is a relatively passive conduct of labour unions in the fight for workers' rights. With such passive behavior, a labour union cannot be a true partner in dispute resolution proceedings or negotiations, which most frequently reduces its role as a partner to a compromise with the employer (Reljanović, 2019: 213). In many private companies, labour unions are not organized or may not be organized. Union organization depends on numerous factors: unemployment rate, labor and social legislation, technological development, the emergence of new highly skilled jobs, company size, etc. In addition to the passive role of unions, there is a mounting crisis of trust among employees towards collective organization and action, primarily driven by the fact that labour unions have increasingly sided with employers and distanced themselves from the employees.

Additionally, unions struggle to establish deeper and more meaningful connections with workers, as they are often focused on ensuring their own survival and attracting as

[8] Zakon o štrajku (Strike Act), *Službeni glasnik FRJ*, br. 29/1996 i *Službeni glasnik RS*, br, 101/2005, 103/2012, https://www.paragraf.rs/propisi/zakon_o_strajku.html

many members as possible to ensure their representative status. As a result, it is difficult to expect serious action from unions, aside from concluding collective agreements, but the role of unions does not end there (McDougall, 2023: 73). A labour union must serve as a continuous supervisory body over the employer's activities. It seems that the exact opposite is happening: employers monitor the work of employees and often collect far more data about them than is required by the labor organization (Reljanović, 2019: 215). This is one of the current problems that unions should particularly pay attention to, ensure that employers collect only the minimum data necessary for the working process, and prevent the collection of data that can be misused, for example, in collective negotiations. A strong union is a prerequisite for the protection of workers' collective rights and other union activities.

Employees' participation in decision-making processes involves their active involvement in making decisions related to the working conditions and processes. Traditionally, the employer has been the sole authority in exercising normative, executive, and disciplinary authorities. However, with the introduction of employees' participation in company decision-making processes, the scope of employers' normative, executive and disciplinary powers has been limited (Ugarković, 2020: 295). In Serbian labour legislation, it is clear that this collective labour right has been reduced to a minimum, as the legislator only envisaged the establishment of employee councils or safety and health committees. However, employers are not obliged to adhere to the decisions of these bodies. Thus, the employee council often serves as a communication body, through which employees receive certain information about the employer's actions and, conversely, the employee council representatives can relay the employees' impressions, opinions and criticisms to the employer.

Another significant challenge in exercising the collective labour rights is collective bargaining. In the ILO Collective Bargaining Convention (1981), collective bargaining was defined as a negotiation process in which a representative union and a representative employers' association try to determine the working conditions and terms of employment, reach a mutual agreement on the content, conclude a collective agreement and regulate mutual relations (ILO, 2015: 6). As such, it is correlated with social dialogue, a well-known international labor standard (Grzybowski, 2023) which aims to align the legitimately opposing interests of social partners (Misaliović, 2019: 115). However, employees encounter difficulties in exercising these rights. Employers are not motivated to engage in collective bargaining as their participation in this process does not bring clear benefits for them, nor are there any sanctions if they do not participate (Delpha, Chapron, Kenné, 2024: 4755). As a result, in some cases, there is no other party that labour unions could effectively negotiate with.

4. CONCLUSION

The main collective labour rights of employees are the right to unionize. the right to participate in decision-making, the right to collective bargaining, and rights related to resolving collective labor disputes. The exercise of employees' collective rights is interrelated and interdependent. For example, workers first have to be organized into unions in order to participate in collective bargaining and to resolve collective labor disputes. A collective labor dispute may arise only during the collective bargaining process, which gives rise to the right and need to resolve the labour dispute.

Collective rights of employees are the result of a long-term struggle for workers' rights, which has been underway to date. There are evident problems in exercising the collective rights of employees: the role of labour unions has been reduced to addressing some basic worker needs and issues; employees' participation in decision-making is often merely a formality, and so on. Although there are various obstacles in exercising collective rights of employees, it is important to indicate some solutions. Many states have already introduced strong legal protection of collective labor rights (Bagwell, Mark, LaVelle, Parker, 2023: 481).

Unions have a wide range of potential for action, and ongoing efforts should be made to reinforce them (Van der Velden, 2024: 436). Unions should take a more active role in influencing labor policies and regulations, with their representatives becoming part of working groups. They should also provide free legal assistance to workers on matters related to exercising their labor rights, such as offering advice, drafting submissions, and representing them before government authorities. Furthermore, unions should support the professional development of workers by organizing various courses, retraining programs, etc. In the context of rapidly developing digital technology, special attention should be given to different forms of digital learning in the professional development of employees.[9]

Employees' participation should be an integral part of the employer's decision-making process. It should not be limited to the possibility of establishing certain employee councils and committees or sharing perspectives. Legislation should include mechanisms which would oblige the employers not only to consult workers on certain matters but also to take their opinions into account. Additionally, the scope of issues on which workers are consulted within the company should be expanded.

Finally, collective bargaining is a process that requires a more prominent place in the system of the protection of collective employee rights (Hayter Visser, 2018: 1). There is an obvious need for collective bargaining. It is essential to establish a culture of social dialogue, as it is the best way to reach a compromise between opposing views of social partners. Through its policies, the state should ensure that the viewpoints of social partners on employees' rights are heard in relevant settings. An institutional commitment to pluralism is "a key democratic principle that ensures space for diverse views and safeguards the rights of individuals and groups to express themselves and influence decision-making through legitimate processes" which "recognizes and balances the different interests of employers, workers and governments" (ILO, 2024: 2). Social dialogue processes are commonly bipartite (e.g. involving the employer and employees representatives) or tripartite (e.g. involving the employer, employees and government representatives). Yet, the culture of social dialogue is further developed within the concept of "tripartism-plus", which refers to situations where the tripartite social partners open up the dialogue or engage other groups in negotiations, such as representatives of scientific and professional institutions and broader interested public, in order to gain wider perspective and consensus on the specific issue (Engin, 2028: 21).

In the Serbian legal system, collective rights of employees are guaranteed in the positive labour legislation. Considering all the above, it can be concluded that there are certain challenges in their implementation, which may be overcome by changing the legal framework but even more so by a societal climate that will encourage social partners to communicate and respect each other's viewpoints. The foundation for a compromise that will be respected in practice can only be established only by reconciling the opposing interests and developing a culture of social dialogue.

[9] For more, see: Ignjatović, G. (2024). Digital Learning in Legal Education: Educational policies, practices and potentials pf pedagogy-driven digital integration, *Facta Universitatis: Law and Politics*, Vol. 22(1), 2024 25-46.

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PRINICIPI, ZNAČAJ I PROBLEMI U OSTVARIVANJU KOLEKTIVNIH PRAVA ZAPOSLENIH

Kolektivna prava i obaveze iz radnog odnosa su izraz kolektivnih interesa subjekata radnog odnosa. Osnovna kolektivna prava zaposlenih su pravo na sindikalno organizovanje, pravo participaciju u odlučivanju, pravo na kolektivno pregovaranje i prava u vezi sa rešavanjem kolektivnih radnih sporova. U vršenju kolektivnih prava zaposlenih uglavnom postoji međusobna povezanost ili uslovljenost. Često jedno kolektivno pravo se ne može vršiti bez drugog. U radu se analiziraju principi i značaj ostvarivanja kolektivnih radnih prava sa naglaskom na izazove u njihovoj realizaciji. Daju se preporuke kako unaprediti primenu propisa koji se odnose na kolektivna prava zaposlenih.

Ključne reči: *kolektivna radna prava, radno zakonodavstvo, zaposleni, zaštita.*